

Why Harvard Law School Wants To Rein In a Star-Struck Professor

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Long before Judge Judy and Judge Joe, there was Arthur Miller and "Miller's Court," a television show that helped explain the law to nonlawyers. Mr. Miller burnished his persona as TV host in an acclaimed public-television series examining the media and society.

In Socratic fashion much imitated by later shows, the Harvard Law professor would posit an issue taken from the daily headlines to a panel of experts, then lead them through questions designed to probe where they stand.

Now Mr. Miller has become embroiled in a case that would be perfect fodder for one of his TV shows. "A Harvard professor wants to give an online course at a smaller school," one can imagine him telling the audience in his Brooklyn-tinged baritone. "Who owns his teaching: the professor or the university? Can two institutions offer his lectures at the same time? You decide."

Last summer, Mr. Miller -- one of Harvard's most recognizable names -- signed on with the Concord University School of Law, an online degree-granter set up by Washington Post Co.'s Kaplan Educational Centers, and videotaped 11 lectures for a course on civil procedure. To him, Mr. Miller says, the Web represents what TV did when he started doing "Miller's Court" in 1979 -- the next frontier for teaching law to the masses.

Harvard doesn't see it that way. In a sign of academia's growing unease at the encroachments of the Internet, the university wants to pull the plug on Mr. Miller's Concord affiliation. Harvard says that despite the surface similarities, Internet lectures aren't like an educational-TV program. Concord is a school, with an enrollment of 170 students, who each pay \$4,200 a year to attend. Harvard policies bar faculty from teaching for another educational institution during the academic year without getting the dean's permission.



Arthur Miller

But Mr. Miller argues that he isn't teaching. He never meets, interacts, or exchanges e-mail with any of the Concord students. They are tested and graded by other faculty at the school. When they have questions about the material in the tapes, it is those teachers, not Mr. Miller, who respond to them.

In a six-page letter to Harvard Law School Dean Robert Clark, the professor argued that he hadn't violated the university's conflict-of-interest rules. "I simply do not see any distinction between preparing a few hours of thoughts about civil procedure on videotape for use at another educational institution via frontier technology and the publication, in whatever form, of casebooks, textbooks, hornbooks, student aids, audio tapes, data collections, or other educational material," Mr. Miller wrote.

Beyond the Gates

Mr. Miller says he feels "vilified" and had even questioned whether he wanted to continue teaching at Harvard. And he argues that the implications of his battle over his Concord involvement go far beyond the gates of Harvard Yard.

The university never objected to his high-profile forays into TV, including a stint as legal editor of ABC's "Good Morning America." Indeed, freelancing is a way of life at Harvard, and the university officially permits faculty members to do outside consulting as long as it accounts for no more than 20% of a professor's "total professional effort." Mr. Miller's colleague Alan Dershowitz helped defend O.J. Simpson, and is a regular on "Rivera Live." The head of the Department of Afro-American Studies, Henry Louis Gates Jr., writes for the New Yorker and stars in a PBS series based on an African-American encyclopedia he co-edited.

The 20% rule has sometimes been controversial, in part because deans and faculty often interpret the limitations differently -- and the general conflict rules now are under review by Harvard's provost. The rush to the Internet has complicated matters even more. It can involve a potential audience of millions and at least the promise of a lot of money, all without violating Harvard's policy. A professor's existing course can be downloaded from the Internet and then viewed anytime.

In the case of Mr. Miller, he made all of his videotapes during the summer academic break from Harvard, when he had no teaching responsibilities. Concord students can watch his lectures on the Internet and then participate in online discussion groups with actual Concord teachers. In his letter to the dean, Mr. Miller argued that Internet ventures cannot be considered teaching for another school because "the very fact that these lectures will be videotaped means that I -- in the corporeal sense -- will not be giving them 'at' another educational institution."

'Not a Gray Area'

In Miller vs. Harvard, the experts are divided as to whether he has crossed the line. "This is not a gray area," says Harvard Business School Dean Kim Clark, who gets many requests by faculty eager to cash in on the Internet boom. "If you want to get the content and the impact of Harvard faculty members, you have to do it at Harvard."

"Arthur got jumped on," counters Charles Nesson, a Harvard Law professor who is involved in some Internet ventures but nonetheless says he is ambivalent about the subject. "Arthur loves a show. Harvard's problem is it hasn't offered to produce him. Why are they letting Concord take this gem? If Harvard does nothing, then those with the drive and experience to experiment with new technology will go off and do it somewhere else."

"I see both sides," says Mr. Gates. "The university makes the course possible, but the professor does the course. I've been teaching the same course, with modifications, for 23 years. I've taught at Yale, Cornell and Duke, too, and when I moved to a new university nobody said to me I couldn't take my course with me because the university owned it."

Why is Harvard so irked? "It's the money," says Mr. Dershowitz, who says he turned down an offer by students in his class who claimed they could earn \$100 million setting up a Dersh.com site to give legal advice online. "What distinguishes the Internet from everything else is the number of zeroes. The money is so overwhelming that it can skew people's judgment."

"Arthur does this for Concord, and then the Michael Milkens and the Microsofts will come along offering huge amounts of money to Harvard professors," echoes Mr. Nesson. Suddenly, "the cream of Harvard is available online, and it's on sale from Microsoft."

Harvard.com

"It's the technology," contends Scott Glanzman, who runs the law school's educational-technology group and leases CD-ROMs of Mr. Miller teaching his civil-procedure course to interested law schools. "The Internet is as revolutionary as Gutenberg's printing press. ... Now, any student can have Arthur Miller teaching at their institution, not just Harvard Law students."

Harvard is also eager to get in on the act. Concord and others are moving much faster than Harvard has to capitalize on the Internet's educational opportunities. Duke University already offers an online M.B.A. degree. Stanford University permits students to earn a master's in electrical engineering on the Internet. And Unext.com (<http://www.unext.com/>), a Chicago company, has put together an academic consortium that includes Columbia University and Carnegie Mellon University to supply business courses on the Net.

Even before he considered going online, Mr. Miller was already one of the best-known faces of Harvard Law School. Mr. Miller says he has been told he was the inspiration for the fictional Charles Kingsfield, the curmudgeonly Harvard Law professor who terrorized and inspired his law students in the movie and TV series based on "The Paper Chase." The book's author, John Jay Osborn Jr., calls the idea "ludicrous" since he graduated from the law school before Mr. Miller joined the Harvard faculty in 1971. But no matter: Mr. Miller has made Harvard Law's methods of asking pointed, off-the-cuff questions more familiar than Kingsfield ever did.

Arriving in Drag

The local television station in Boston that launched "Miller's Court" discovered Mr. Miller through his annual "Erie Day" lecture at the law school. To dramatize the famous 1938 U.S. Supreme Court personal-injury case *Erie Railroad vs. Tompkins*, Mr. Miller every year came to class dressed in costume and did a skit illustrating the lawsuit's main points. One year he was Superman, complete with a cape; another time he wore a toga, his bare chest and a pair of knee socks and leather shoes visible under the sheet. He even showed up at class in drag, complete with fishnet stockings, high-heeled shoes, lipstick, and a dress.

He gave up the spoofs after some students complained they weren't appropriate in the classroom, but Mr. Miller still tries to offer a humorous teaching style. He compared one famous case to a vintage wine that "like a great 1961 Bordeaux, has matured in the bottle and has a magnificent odor." He frequently wades into the rows of students to make a point, making them laugh when he tries to explain how a court's jurisdiction works by grabbing a

student by the shirt sleeve and saying, "He can probably beat the crap out of me. But I've got power over him."

On "Miller's Court," and later in his appearances on the Fred Friendly media seminars on PBS, he took a similar tack. Wearing a trademark navy-blue suit with a red tie and a red pocket handkerchief, he grilled his guests on everything from drug use to terrorism.

Same Trademark Style

The Internet videotapes are more muted than his previous efforts. He gives his lectures standing in front of shelves of lawbooks; there is no moving around or interaction with the audience. Still, there is the same trademark Miller style. In explaining to Concord students why civil procedure is a difficult course he says, "This material is probably material you have not had any prior experience with, unless you're one of those Court TV junkies and you sit watching trials all day long."

The troubles with Harvard began last spring soon after the news releases went out announcing Mr. Miller had signed on with Concord. Mr. Miller says Law School Dean Mr. Clark dropped by his office and expressed concern that people might think the professor had joined another school's faculty. Mr. Clark followed up with a letter asking Mr. Miller to terminate his contract with Concord, Mr. Miller says. Mr. Clark declined to be interviewed for this article.

After the complaints, Concord's dean, Jack Goetz, offered to fly to Harvard to talk to officials there, but Mr. Miller refused. "My mistake," Mr. Miller now concedes, "was I didn't get front-end permission from the dean" before the controversy boiled up. But he says that's because "I have been doing videotape and audio-tape lectures of my courses for 25 years and didn't think this was any different."

Following the talk with the dean, Mr. Miller wrote his six-page letter. He cited the law school's long tradition of having professors be affiliated with other places, mentioning one who was a trustee at Yale. He said he didn't consider his work at Concord to be teaching at another school, but rather a chance to help out a fledgling institution and experiment with a new technology. The letter concluded by arguing that Internet ventures aren't covered by the law school's conflict rules.

They are now.

In August, the law school published its latest faculty manual and added a new rule dealing with teaching activities on the Internet. Any faculty member who wants to serve as a teacher, researcher, or salaried consultant to an Internet-based "university" must first get permission from the dean, followed by a vote by the corporation that governs the university. Failure to do so, the handbook warns, will result in severe penalties, although it doesn't spell out what those penalties might be.

"We want our fundamental principles to remain intact and to not be driven by the technology of the moment," says Joe Wrinn, a Harvard spokesman. The university's highest administrative body, consisting of all the schools' deans, has debated the issue of "distance learning" in several meetings, but Mr. Wrinn declined to comment on whether Mr. Miller can or will be sanctioned for what the school sees as a violation of the conflict-of-interest rule.

Under his contract with Concord, Mr. Miller is supposed to make additional videotapes over the summer for a second course on intellectual property. Now that the law school officially bars such activities without prior approval, Mr. Miller says he is considering all his options, including waiving his salary at Concord (he won't disclose how much he is being paid) and continuing to work with the online university free of charge. But he says he won't walk away from the Internet. "I don't like being treated as a lawbreaker on this issue."

Official Policy

The law school's new conflict-of-interest rule doesn't yet apply universitywide. And that, too, is creating friction among professors at different schools. Harvard has set up a committee to study Internet issues and make recommendations to the corporation, but there is no official policy yet, Mr. Wrinn says. At the same time, Harvard Business School is going ahead and developing online executive-education courses to be sold to companies, and is looking into a distance-learning program that would offer certification. Mr. Gates set up a Web site that contains course material based on his Encarta Africana encyclopedia in addition to news and e-mail.

Regarding the lack of dissension surrounding Mr. Gates's Internet ventures compared with the furor his own work with Concord has stirred up, Mr. Miller says, "Not all members of the Harvard faculty appear to be treated equally." Mr. Gates counters that he hasn't been shown any sort of favoritism and sees a difference between the activities. "Yes, I'm developing teaching modules and posting them on our Web site for elementary, middle-school, and high-school teachers, but this isn't university-level stuff," he says. "I'm not putting the African-American literature course I teach at Harvard online."

Other professors say that if this were a case on "Miller's Court," Harvard might win. "Harvard is a residential institution with an education that is based on face-to-face contact, participation in a community of scholars, and quality credentials," says Harvard Law's Mr. Nesson. "Concord's program is like watching television. It's a totally degraded form of legal education. Concord wants Arthur because they want to associate Concord with Harvard. It's a dilution of the Harvard name."

Adds Joseph Nye, dean of Harvard's John F. Kennedy School of Government: "Someone might argue it's not fair to get a Harvard course for free or for \$100 on the Internet, while a student at Harvard has to pay \$30,000 annual tuition. The basic intellectual capital that goes into a course is provided by the university. The idea that professors can skim the cream, stick a course on the Internet, and get all the gains isn't acceptable."

But Mr. Miller sums up his case differently: "How much of Arthur Miller does Harvard own?"

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